

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: ENVIRONMENTAL RESOURCES

BOARD AGENDA # \*B-1

Urgent

Routine

AGENDA DATE May 19, 2009

CEO Concur with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Enter into an Agreement with PSC 21st Century EMI of California, Inc., for the Sorting, Transporting, and Recycling of Latex Paint at the Stanislaus County Household Hazardous Waste Collection Facility

STAFF RECOMMENDATIONS:

1. Approve the agreement with PSC 21st Century EMI of California, Inc. a wholly owned subsidiary of PSC, for the sorting, transporting, and recycling of Latex Paint at the Stanislaus County Household Hazardous Waste Collection Facility.
2. Authorize the Director of the Department of Environmental Resources, or her designee, to sign the agreement with PSC 21st Century EMI of California, Inc., for the sorting, transporting, and recycling of latex paint at the Stanislaus County Household Hazardous Waste Collection Facility, at a cost not to exceed \$300,000 over a five-year period expiring on May 18, 2014.
3. Authorize the Director of the Department of Environmental Resources, or her designee, to sign any amendments to the agreement with PSC 21st Century EMI of California, Inc within the specified contract amount .

FISCAL IMPACT:

If this contract is awarded, the maximum amount to be paid for services provided by PSC 21st Century EMI will not exceed \$300,000 over a five year period expiring on May 18, 2014. The cost for the sorting, transporting, and recycling of latex paint is collected from a \$3.00 per ton tipping fee surcharge on waste that is deposited at the waste-to-energy facility. The Department of Environmental Resources has accounted for these disposal costs in its current fiscal year budget and will continue to budget for these costs in future fiscal years.

BOARD ACTION AS FOLLOWS:

No. 2009-320

On motion of Supervisor Grover, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**DISCUSSION:**

On September 25, 1990, the Stanislaus County Board of Supervisors approved the implementation of a comprehensive Household Hazardous Waste program. The program consists of a permanent household hazardous waste collection facility located at 1716 Morgan Road that opened in April 1994, and a small business waste collection program that started in December 1994. Additional activities consist of public education and awareness, as well as mobile collections events in various locations throughout the cities and county of Stanislaus.

On January 31, 2006, an agreement was established between the County of Stanislaus ("County") and PSC 21<sup>st</sup> Century EMI (PSC) for services involving the sorting and recycling of latex paint. The term of the agreement allowed for extensions on a year-to-year basis up to three (3) years. The term of the agreement was from January 31, 2006 through January 31, 2009.

Given that the previous Agreement for the sorting and recycling of latex paint expired on January 31, 2009, the Department of Environmental Resources (DER) in partnership with the General Services Agency's (GSA) Purchasing Division issued an invitation to bid on December 3, 2008 for the sorting, transporting, and recycling of collected latex paint from the Household Hazardous Waste Collection Facility. The bid was closed on January 6, 2009, and the GSA Purchasing Division conducted the opening of the Bids on the closing date.

There are several specialized contractors with the knowledge and experience to sort and recycle latex paint. Two recyclers responded to the invitation to bid; Amazon Recycling Inc. and PSC. The GSA Purchasing Division and DER staff reviewed the bid responses and PSC was determined to be the lowest responsive and responsible bidder. PSC is a qualified recycler of latex paint.

The bid submitted by Amazon Recycling Inc. was \$265,575.06, and the bid submitted by PSC was \$213, 511.80.

The proposed Independent Contractor Service Agreement with PSC 21<sup>st</sup> Century EMI for the sorting, transporting, and recycling of latex paint, at the County's Household Waste Collection Facility has a term of five years from the date of award and the cumulative amount is not to exceed \$300,000. (Attachment A). This not to exceed amount was based on historical disposal costs of approximately \$50,000 per year, a 20% projected increase was added to the amount due to an increase of latex paint collection from foreclosed homes within the County.

Approval to Enter into an Agreement with PSC 21st Century EMI of California, Inc., for the Sorting, Transporting, and Recycling of Latex Paint at the Stanislaus County Household Hazardous Waste Collection Facility  
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**POLICY ISSUES:**

The Board of Supervisors should determine if approval of staff's recommendation is consistent with its stated priorities of a safe community, a healthy community and the efficient delivery of public services.

**STAFFING IMPACT:**

There are no staffing impacts associated with this item.



DEPARTMENT OF ENVIRONMENTAL RESOURCES  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement For Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and 21st Century Environmental Management of California, LP ("Contractor") on July 7, 2009.

**Recitals**

WHEREAS, the County has a need for services involving sorting, loading, transporting and recycling of latex paint; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

**1. Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

**2. Consideration**

**2.1** County shall pay Contractor as set forth in Exhibit A and **Exhibit B**.

**2.2** Except as expressly provided in Exhibit A and Exhibit B of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed

operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

## 8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities

of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.



12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Department of Environmental Resources  
Attention: Susan M. Garcia, C.P.M.  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

To Contractor: 21st Century Environmental Management of California, LP  
Attention: Linda Brown  
535 Getty Court, Suite H  
Benicia, CA 94510

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not

contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

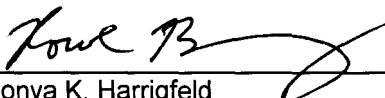
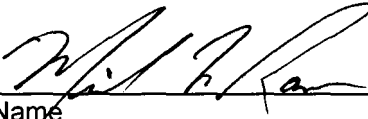
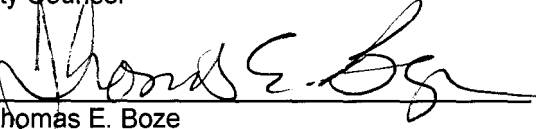
20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

<p><b>COUNTY OF STANISLAUS</b> Department of Environmental Resources</p> <p>By: <u></u> Sonya K. Harrigfeld Director</p> <p>Date: <u>7-7-09</u></p> <p style="text-align: center;">"County"</p>	<p><b>21<sup>ST</sup> CENTURY ENVIRONMENTAL MANAGEMENT OF CALIFORNIA LP</b></p> <p>By: <u></u> Name Title</p> <p>Date: <u>7-1-09</u></p> <p style="text-align: center;">"Contractor"</p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By: <u></u> Thomas E. Boze Deputy County Counsel</p>	

**EXHIBIT A**

**A. BACKGROUND**

Stanislaus County Department of Environmental Resources (DER) operates a permitted, permanent Household Hazardous Waste (HHW) Collection facility and seven (7) temporary sites. DER's program collects a wide range of household and Conditionally Exempt Small Quantity Generator (CESQG) hazardous wastes including, but not limited to, paint and paint related products.

The County presorts the collected one gallon, five gallon and quart size latex paint containers and uses pallets to store the latex paint locally at the HHW facility. Each pallet holds up to 126 of the one (1) gallon containers and 27 of the five (5) gallon buckets. The County normally requests a shipment to be made when 40-45 pallets are accumulated on site. A shipment may be requested every three months or sooner as it depends on how much paint the County has collected. Historically the County has made 4-5 shipments a year. Over the last three years the County has transported over 36,399 gallons of latex paint for recycling.

The HHW facility hours of operation are Wednesday, Friday and Saturday from 9:00 a.m. to 1:00 p.m.

**B. DEFINITION**

For the purposes of this Agreement, "recyclable latex paint" means any water-based latex paint, still in liquid form, that is transferred for the purposes of being recycled as defined in Article 10.7 of Chapter 6.5 of Division 20 of the California Health and Safety Code. Latex Paint must be recycled not incinerated to meet the definition of recycling.

**C. SCOPE OF WORK**

Contractor shall provide, all the labor, supervision, tools, supplies, materials and equipment necessary to safely and lawfully document, sort, load, transport and recycle the collected latex paint which is pre-sorted, prepared and packaged by County staff at the County's Household Hazardous Waste collection site at Morgan Road, Modesto, California. Contractor shall transport the latex paint to a recycling facility. Contractor shall dispose of containers the paint was housed in and provide evidence of such with their invoices. Contractor shall perform services on an as needed basis.

The Contractor shall perform the work in accordance with all applicable federal, state and local statutes and shall possess all required permits, licenses, registrations, identification numbers and insurance coverage necessary to the sort, load, transport and recycle latex paint and dispose of containers the paint was housed in.

Request for Service

The County shall submit a formal request to the Contractor's representative, via email or fax at least five (5) days in advance of the desired pick up date. The request shall consist of the preferred pick up date and the quantity of latex paint. Contractor shall fax or email the County a cost estimate of the desired pick up, at least four (4) working days in advance of the desired pick up. The cost estimate shall be based on the rates established in Exhibit B of this Agreement. Contractor shall provide the County, at least three (3) working days in advance of the desired pick up date, via fax or email, the actual date the pick up will be made. Contractor shall also call the County two (2) working days prior to the actual pick up to confirm the pick up will be made.

Service Requirements

The Contractor shall perform the services at the County's facility, as follows:

- Sort paint that has been collected and pre-sorted and packaged by the County, on an as needed basis;
- Be responsible for providing their employees the necessary protective gear as required by OSHA;
- Remove any existing shrink-wrap plastic off of the paint cans and dispose the plastic wrap into County waste receptacles;
- Sort the cans of paint that are in bins, on pallets, or on the pavement into two (2) areas: oil based material and usable latex based paints;
- Sort out unsuitable that may contain hazardous properties and place in County's designated container;
- Remove the paint containers that are oil based, have no label or the paint is dried and place the paint container in a County owned bin designated by the County representative;
- Place the sorted latex paint containers into cubic yard boxes, pallets, or bins provided by the contractor, according to size, color, type, etc.,
- Prepare the latex paint containers for shipping to a recycling plant. Contractor shall be responsible for labeling and shrink-wrapping the pallets, labeling the bins, or cubic yard boxes and shall also be responsible for any paint that is missorted or mislabeled;
- Provide cubic yard boxes, pallets, or bins to place sorted latex paint containers in;
- Load sorted latex paint containers that have been placed in cubic yard boxes, on pallets, or bins onto a truck for transportation to the recycling plant;
- Transport the sorted latex paint in one (1) to five (5) gallon labeled containers in lined tub skids, in cubic yard boxes, or on pallets for recycling to the recycling plant;
- Receive, unload and recycle the sorted latex paint and dispose of paint containers according to federal, state, and local laws, regulations and ordinances.
- Maintain pollution liability;

The maximum amount of product to be shipped per shipment from the County shall not exceed 1,500 containers. Sorted materials, which are shipped to the Contractor for recycling, shall not be returned to the County if the materials are found unacceptable, i.e., oil-based or contaminated product. The unacceptable material is the responsibility of the Contractor and the Contractor shall dispose of these unacceptable materials according to federal, state, and local laws, regulations and ordinances at no additional cost to the County.

**Project Management:** Contractor shall designate a Project Manager to act as primary contact with the County.

**Labor:** Contractor shall provide all necessary labor, material, tools, and equipment to safely and lawfully sort, document, load, transport and recycle the pre-sorted latex paint packaged by County staff at the County's HHW collection site at Morgan Road, Modesto, California. Contractor shall pick up packaged waste at 1716 Morgan Road, Modesto, California. Manifesting, loading, shipping and disposal tasks shall be conducted in accordance with all applicable requirements of Federal, State, and local laws and regulations. Contractor shall provide properly trained, licensed and qualified personnel to perform various duties as part of the collection, transportation and recycling of latex paint. Contractor shall be solely responsible for transporting the latex paint to the appropriate destination in a manner consistent with Federal, State and local statutes and regulations.

**Documentation:** Contractor's personnel shall properly prepare for each latex paint shipment all required manifests, related shipping documents, etc as required by the California State Health and Safety Code 25163.

**Customer Service:** Contractor's customer service shall include prompt sorting scheduling, prompt transportation shipment scheduling, supplying cubic yard boxes, bins, or pallets to ship latex paint in and detailed accurate billing.

**Materials/Supplies:** Contractor shall provide cubic yard boxes, bins or pallets, safety equipment, signage, labels, appropriate shipping papers, and other equipment and materials used in conjunction with the operation of latex paint sorting, loading, transporting and recycling at no additional cost to the County.

**Recycling/Disposal:** County shall not be responsible for additional costs incurred as a result of recycling facility refusing to accept any latex paint from the Contractor. County reserves the right to approve or reject the management method and recycling facility selected by the Contractor.

**OSHA Compliance:** All services, training and materials, equipment provided by Contractor must be in compliance with current California State Division of Industrial Safety Orders and requirements stipulated by Occupational Safety and Health Administration (OSHA), California State Health and Safety Code 25217 through Code 25217.4, Department of Transportation (DOT), DTSC and any applicable regulatory agency requirements. Contractor shall ensure that all personnel performing services under the contract shall have received training appropriate to their assigned tasks and that this training is current (including any subcontractors).

Contractor warrants that the described material, equipment or labor meets all appropriate OSHA safety and health requirements. Further, it warrants that the said material or equipment shall not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment.

The Contractor shall be responsible for strict compliance with all requirements of the California Occupational Safety and Health Act (OSHA), which are applicable to the work to be accomplished pursuant to this Agreement. OSHA shall be construed to include, but not be limited to, all applicable safety orders issued by the Division of Industrial Safety, State of California. In the event the Contractor or any of the Contractor's employees shall observe any violation of OSHA in or on the premises on which the Contractor is to perform work pursuant to this contract, the Contractor shall immediately give written notice to the County of such violation.

**Standards Compliance:** Contractor shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clear Air Act (41 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibits the use under nonexempt federal Contracts, grants and loans of facilities included on the EPA List of Violating Facilities. The Contractor shall report violations to the applicable federal agency and the US EPA Assistant Administrator for enforcement.

**Transportation:** Contractor shall be solely responsible for transporting all latex paint loaded for transporting to the appropriate destinations(s) in a manner consistent with Federal, State and local statutes and regulations. Transportation shall also be in compliance with the California State Health and Safety Code 25163.

**Personal Protective Equipment:** Contractor shall provide contractor's personnel with all personal protective equipment (PPE) needed for use while performing tasks at the County's HHW collection facility. This includes, but is not limited to, gloves, face shields, eye protection, hats, respiratory protection equipment, back support and suitable splash protection suits. All Contractor's personnel shall wear a minimum level of personal protective equipment consisting of Tyvek coveralls or equivalent, gloves, steel-toed footwear, and protective eyewear.

**Responsibility During Transport:** Contractor assumes all responsibility allowed by law for the proper management of latex paint from the point at which Contractor accepts it for transportation to the point at which it reaches the recycle plant or disposal destination for paint cans.

**Responsibility for Damage:** Contractor shall take every precaution to protect all public and private property during the performance of the Agreement. All damages to public and private property by Contractor's personnel working under a sub-contractual agreement with Contractor or by Contractor's equipment shall be promptly repaired to the condition existing prior to the damage or be replaced. All such repair or replacement costs shall be the sole responsibility of the Contractor.

#### D. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as

identified in the current Schedule of Rates - Exhibit B attached hereto and, by this reference, made a part hereof. Contractor shall be compensated, and paid in arrears and shall submit an invoice for each service that is performed.

**E. LIMIT OF EXPENDITURE**

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$300,000.00, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

**F. INVOICE REMIT TO:**

The remit to address is:  
Stanislaus County  
Department of Environmental Resources  
Attention: Beronia Beniamine  
3800 Cornucopia Way  
Suite C  
Modesto, Ca 95376

**G. REPRESENTATIVES**

The County's Project Manager is Beronia Beniamine, (209) 525-6746. The Contractor's representatives is Linda Brown, (707) 748-3040.

**H. PROTECTION OF EXISTING FACILITIES**

Contractor shall take every precaution to protect all public and private property during the performance of this contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.

**I. SAFETY REQUIREMENTS**

All services and merchandise must comply with current California State Division of Industrial Safety Orders and OSHA.

**J. AGREEMENT PERIOD**

This shall be effective from May 19, 2009 or date of award; whichever is later, through May 18, 2014.

**K. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously paid.

**L. REMOVAL OF UNSATISFACTORY EMPLOYEES**

The Contractor shall only furnish employees who are competent and skilled for work under this Agreement.

If, in the opinion of the County, an employee of the Contractor is incompetent or disorderly, refuses to perform in accordance with the terms and conditions of this Agreement, threatens or

uses abusive language while on County property, or is otherwise unsatisfactory, that employee shall be removed from all work under this Agreement.

**M. MULTI-YEAR CONTRACTS**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, the County shall have the right to terminate this contract and the Contractor is not entitled to recover any costs not incurred prior to termination.

*(Intentionally left blank)*

**EXHIBIT B  
PRICE SCHEDULE**

**PRICE SCHEDULE:**

The Contractor shall provide all the supervision, labor, equipment, materials, supplies, transportation and tools necessary to perform the services identified in Exhibit A – Scope of Work / Specifications in accordance with the rate schedule below.

The pricing for the Contract term is identified in the price schedule below:

Year	Unit Price Per One Gallon Container	Unit Price Per Five Gallon Container	Unit Price Per Quart Container
1	\$2.38	\$12.50	\$0.50
2	\$2.38	\$12.50	\$0.50
3	\$2.38	\$12.50	\$0.50
4	\$2.38	\$12.50	\$0.50
5	\$2.38	\$12.50	\$0.50

**Note:** The above unit price per one gallon, five gallon or quart container shall include costs to place the sorted latex paint into Contractor owned cubic yard boxes, bins or pallets and load onto the truck, transport latex paint to the recycling plant, and to recycle the latex paint at the recycling plant. **No fuel recovery surcharges/fee shall apply to this Agreement.**

**LABOR FOR PAINT SORTING:**

The below are hourly billable rates for sorting, packaging of latex paint:

Year	Paint Supervisor Billable Rate Per Hour	Paint Technician Billable Rate Per Hour
1	\$ 35.00	\$ 35.00
2	\$ 35.00	\$ 35.00
3	\$ 35.00	\$ 35.00
4	\$ 35.00	\$ 35.00
5	\$ 35.00	\$ 35.00